

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:

ERIC A. FARRIS,

Respondent.

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Supreme Court #SC94418

INFORMANT'S REPLY BRIEF

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INFORMANT

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ARGUMENT

I.

DISBARMENT IS THE APPROPRIATE SANCTION IN THIS CASE WHERE RESPONDENT VIOLATED THE SAFEKEEPING PROPERTY RULES, MISAPPROPRIATED CLIENT AND THIRD PARTY FUNDS, ACTED DECEITFULLY AND DISHONESTLY TOWARD HIS CLIENTS, THE OCDC AND THE DISCIPLINARY HEARING PANEL AND FAILED TO COMPLY WITH THE REQUIREMENTS OF THE RULES OF PROFESSIONAL CONDUCT BECAUSE:

A. THE ABA STANDARDS FOR IMPOSING LAWYER SANCTIONS SUGGEST DISBARMENT AS THE APPROPRIATE SANCTION; AND

B. THE COURT HAS RULED THAT ATTORNEYS WHO STEAL MONEY AND ENGAGE IN DISHONEST AND DECEITFUL CONDUCT SHOULD BE DISBARRED.

Respondent's defense to the serious charges of theft and dishonesty present in this discipline case can be summed up in the following excerpt from his Brief:

“Respondent testified that his former spouse's dominance over the firm's administrative matters increased after Respondent broke his wrist in 2009 and had his pulmonary embolism in 2010. Respondent testified that he thought he could trust his former spouse but as it turned out “she's a lying

thief” and a [sic] “not a person who could be trusted”. Respondent also testified that he “shouldn’t have trusted a spouse who turned out to be a thief” and he made a “mistake of trusting a thieving spouse” **Respondent’s Brief at 21.**

Respondent attempts to support his claim with a series of false statements and unsupported references to matters outside the record in this case. He concludes by asserting that he cannot and should not be held professionally responsible for the alleged misdeeds of his spouse. Respondent’s attempts to shift blame for his own professional misconduct should be summarily rejected.

Respondent’s assertion that his spouse was responsible for the theft of client funds was submitted as a defense at the hearing before the Disciplinary Hearing Panel held on November 18, 2013. In anticipation of Respondent attempting to blame his employee-wife for the theft, Informant sought leave from the Panel in advance of the hearing to file a Second Amended Information adding a violation of Rule 4-5.3 (Responsibilities regarding Non-lawyer Assistants) for his purported failure to properly supervise his non-lawyer staff and for providing non-lawyer staff with access and control of his trust account. Respondent opposed the Informant’s motion to amend. The Panel took the Informant’s motion under advisement. The Panel ultimately rejected Informant’s Motion to Amend because it found that Respondent “offered no believable evidence” to support his claim that his wife committed the improper transfers and misappropriations of client and third party funds without his knowledge. **App. at 866.** In other words, the Panel did not permit Informant to amend to add the Rule 4-5.3 charge because it found no credible

evidence that anyone other than Respondent himself was responsible for the theft and misappropriation of client and third party funds.

The Panel made the following probative findings of fact and conclusions of law regarding Respondent's state of mind, lack of remorse and dishonesty in his dealings with clients and the disciplinary process:

- “Of the duties owed by a lawyer to a client, failure to preserve client’s property is perhaps the most significant. The Panel believes that Respondent *knowingly* failed to maintain funds in his trust account to pay medical bills of Ms. Sisson. He *knowingly* failed to negotiate with the health care providers. The money he kept in his trust account to pay the health care providers of Ms. Sisson disappeared. It was not paid to Ms. Sisson or to her health care providers.” **App. at 847.** (*emphasis supplied*).
- “Despite the Panel’s earnest hopes to the contrary, the Panel is very concerned that there likely could be other Respondent’s clients in the same situation yet undiscovered. In virtually identical fashion, Respondent failed to promptly deliver to either third persons or the client funds to which they were entitled.” **App. at 848.**
- “As to Count I, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation by continuing to produce a series of various excuses, rather than valid explanations for his failure to account for the missing funds. He also produced a check to Skaggs Hospital on his trust account and

claimed that he attempted to pay Ms. Sisson's hospital lien. In fact, the check was never delivered to Skaggs or presented for payment." **App. at 849.**

- "Respondent has a duty to respond to the disciplinary authority promptly and completely. Respondent failed in that duty. He was asked to provide documentation from his file to the disciplinary authority and failed to do so. Respondent was asked to provide documentation regarding his communication with Ms. Sisson and Mr. and Mrs. Daughenbaugh's medical providers and failed to do so. The Panel believes that Respondent *knowingly* engaged in this conduct and caused injury or potential injury to his clients, the public, or the legal system and suspension is warranted..." **App. at 850.** (*emphasis supplied*).
- "The aggravating circumstances that apply here include...a dishonest or selfish motive. This is demonstrated by Respondent siphoning trust account funds into his office account and paying personal, non-office related bills and expenses." **App. at 851.**
- "...Respondent submitted false statements and false evidence to try to cover up the abuse of the trust account when he produced a check to Skaggs Hospital that was never tendered." **App. at 851.**
- "...Respondent's conduct with regard to restitution has been one of indifference." **App. at 851.**
- "Additionally, the Panel also takes into consideration what they conclude is a lack of remorse or acceptance of what should be obvious responsibility by

Respondent. Despite verbal apologies, Respondent has made no firm offer of full restitution to either Ms. Sisson or the Daughenbaughs. Respondent does not seem to express any sincere acknowledgement of the least wrongdoing or need for any corrections in his practice, nor offered any evidence of the same other than laying blame on others.” **App. at 852.**

- “The Panel was also very concerned about the odd patterns of undocumented transfers from the trust account. After many transfers for large, exactly even dollar amounts, Respondent began transfers of odd dollar amounts from his trust account, many for \$9999.00, without offering any rational explanation.” **App. at 852.**
- “However, the Panel is not impressed with the explanations offered by Respondent, and finds his testimony generally questionable and often bordering on the disingenuous. Respondent called numerous witnesses who were nothing more than character witnesses, and some were clients, none of whom had been in similar situations where Respondent held large sums of settlement monies on their behalf in his trust account. The testimony of those witnesses is not considered probative of the issues on Respondent’s behalf.” **App. at 852-852.**

The Disciplinary Hearing Panel soundly rejected Respondent’s attempt to blame others for his own serious and knowing theft of client and third party funds. This Court should accept the Panel’s findings in that regard.

CONCLUSION

Respondent engaged in professional misconduct involving communication, safekeeping property, deceit and misrepresentation in his handling of client and third party funds in the both the Sisson and Daughenbaugh matters. The presence of aggravating factors, including (i) a dishonest, selfish and deceitful motivation driving his actions, (ii) the submission of false evidence, (iii) substantial experience in the practice of law, and (iv) an indifference to making full restitution to those injured by his actions, require disbarment.

Respectfully submitted,

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ATTORNEY FOR INFORMANT

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 2014, a copy of Informant's Reply Brief is being sent through the Missouri Supreme Court e-filing system to:

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Respondent



Alan D. Pratzel

CERTIFICATION: RULE 84.06(c)

I hereby certify to the best of my knowledge, information and belief that this reply brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 1428 words, according to Microsoft Word, which is the word processing system used to prepare this Reply Brief.



Alan D. Pratzel